

KRS CHAPTER 217B

FERTILIZER AND PESTICIDE USE AND APPLICATION

217B.010 Title for chapter.

This chapter shall be known as the "Kentucky Fertilizer and Pesticide Storage, and Pesticide Use and Application Act of 1996."

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 171, sec. 1, effective July 15, 1996. -- Created 1972 Ky. Acts ch. 130, sec. 1.

217B.020 Administration of KRS Chapter 217B.

This chapter shall be administered by the Department of Agriculture, hereinafter referred to as the department.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 295, sec. 62, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 148, sec. 1. -- Created 1972 Ky. Acts ch. 130, sec. 2.

217B.030 Purpose of chapter.

The purpose of this chapter is to regulate in the public interest, the storage, use, and application of insecticides, fungicides, herbicides, defoliants, desiccants, plant growth regulators, nematocides, rodenticides, and any other pesticides and the storage of fertilizers designated by the department by administrative regulation.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 171, sec. 2, effective July 15, 1996 -- Amended 1974 Ky. Acts ch. 148, sec. 2. -- Created 1972 Ky. Acts ch. 130, sec. 3.

217B.040 Definitions for chapter.

For the purposes of this chapter, unless the context requires otherwise:

(1) "Pest" means:

- (a) Any insect, snail, slug, rodent, nematode, fungus, weed; or
- (b) Any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department declares to be a pest;

(2) "Pesticide" means:

- (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest;
- (b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; or
- (c) Any substance or mixture of substances intended to be used as a spray adjuvant, once they have been mixed with an EPA registered product;

(3) "Defoliant" means:

any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission;

(4) "Desiccant" means:

any substance or mixture of substances intended to artificially accelerate the drying of plant tissues;

(5) "Plant regulator" means:

any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(6) "Insect" means:

any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example beetles, bugs, bees, wasps, and flies, and includes other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example spiders, mites, ticks, centipedes, and wood lice, and also nematodes and other worms, and any other invertebrates which are destructive, constitute a liability, and may be classed as pests;

(7) "Fungi" means:

all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(8) "Fertilizer" means:

any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation;

(9) "Weed" means:

any plant which grows where not wanted;

(10) "Nematode" means:

invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, and may also be called nemas or eelworms;

(11)

"Snails or slugs" include:

all harmful mollusks;

(12) "Person" means:

any individual, partnership, association, or any organized group of persons whether incorporated or not;

(13) "Equipment" means:

any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land, but shall not include any pressurized hand-sized household device used to apply any pesticide;

(14) "Restricted use pesticide" means:

any pesticide classified for restricted use by the administrator, EPA, or by administrative regulation of the department;

(15) "Land" means:

all land and water areas, including airspace, and all plants, animals, structures, buildings, devices, and contrivances and machinery appurtenant to or situated on them, fixed or mobile, including any used for transportation;

(16) "Pesticide applicator" means:

any individual employed or supervised by a pesticide operator to apply pesticides. The term does not include trainees;

(17) "Pesticide operator" means:

any individual who owns or manages a pesticide application business that is engaged in the business of applying pesticides upon the lands of another;

(18) "Pest control consultant" means:

any person who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests;

(19) "Noncommercial applicator" means:

any individual employed by golf courses, municipal corporations, public utilities, or other governmental agencies making applications of pesticides to lands owned, occupied, or managed by his or her employer;

(20) "Wildlife" means:

all living things that are neither human, domesticated, nor, as defined in this chapter, pests; including, but not limited to mammals, birds, and aquatic life;

(21) "Distribute" means:

to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive, and, having received, deliver or offer to deliver any pesticides in this state excepting internal distribution within a company or organization;

(22) "EPA" means:

the United States Environmental Protection Agency;

(23) "Label" means:

the written, printed, or graphic matter on, or attached to, the pesticide or device or to any of its containers or wrappers;

(24) "Spray adjuvant" means:

any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other

pesticide as an aid to the application or to the effect of it, and which is in a package or container separate from that of the other pesticide with which it is to be used;

(25) "Commissioner" means:

the Commissioner of the Department of Agriculture;

(26) "Dealer" means:

any person that engages in the storage of bulk fertilizer or a restricted use pesticide for the purpose of redistribution or direct resale, or engages in the business of applying any pesticide to the lands of another. A "dealer" shall not include a manufacturer of a restricted use pesticide or a fertilizer who distributes his or her product solely to a dealer;

(27) "Trainee" means:

an individual who has been employed by a dealer and is working under the direct on-the-job supervision of a licensed operator or applicator;

(28) "Direct on-the-job supervision" means:

having a licensed operator or licensed applicator physically on site and directly supervising or training an individual in the application of a pesticide;

(29) "Branch office" means:

any location of a dealer other than its designated principal place of business location, but does not include on-premises and off-premises bulk storage or receiving warehouses used solely for the purpose of customer order filling;

(30) "Applicant" means:

a person applying for a license or registration under this chapter;

(31) "Pesticide sales agent" means:

an individual who sells or distributes restricted use pesticides or an individual who sells and makes recommendations for the use or application of pesticides to the final user;

(32) "Limited license" means:

a license that is issued by the department for noncommercial use, and shall be valid only when an individual is making applications of pesticides to lands owned, occupied, or managed by his or her employer;

(33) "Certified crop advisor" means:

an individual who has met the requirements of and has been certified by the Kentucky Certified Crop Advisor Board.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 1, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 171, sec. 3, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 250, sec. 1, effective July 14, 1992. -- Amended 1974 Ky. Acts ch. 148, sec. 3. -- Created 1972 Ky. Acts ch. 130, sec. 4.

217B.050 Authority for administrative regulations.

(1) The department shall administer and enforce the provisions of this chapter and promulgate administrative regulations to carry out the provisions of this chapter and in the administrative regulations may prescribe methods to be used in the storage of fertilizers and pesticides, and application of pesticides. Where the department finds that the administrative

regulations are necessary to carry out the purpose and intent of this chapter, the administrative regulations may relate to the time, place, manner, and method of storage and application of the pesticides and storage of fertilizers and pesticides, may restrict or prohibit use of pesticides in designated areas during specified periods of time, and shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to:

- (a) Plants, including forage plants, on adjacent or nearby lands;
- (b) Wildlife in the adjoining or nearby areas;
- (c) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and
- (d) Pollinating insects, animals, or persons.

(2) In promulgating the administrative regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state and of the federal government.

(3) The department may by administrative regulation adopt a list of "restricted use pesticides" for the state or for designated areas within the state if it finds that the characteristics of the pesticides require restricting their use to prevent injury on lands other than the land to which they are applied, or to persons, animals, crops, or pests or vegetation other than the pests or vegetation which they are intended to destroy. For the purpose of uniformity of requirements between the states and the federal government, the department may adopt the list of "restricted use pesticides" as established by the Environmental Protection Agency or other federal or state agencies.

(4) The department may establish additional classifications of applicator or operator licenses as required for conformance with the Federal Environmental Pesticide Control Act of 1972. The classifications may include private farmer applicators, commercial establishment applicators, and government employee applicators not specifically mentioned in this chapter. The administrative regulations may specify licensing conditions, procedures, and fees not to exceed those fees specified for other licensees under this chapter.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 2, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 171, sec. 4, effective July 15, 1996. -- Amended 1980 Ky. Acts ch. 295, sec. 63, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 148, sec. 4. -- Created 1972 Ky. Acts ch. 130, sec. 5.

217B.060 Licenses -- Classification -- Application requirements -- Expiration.

(1) The department may classify licenses to be issued under this chapter. The classifications may include but not be limited to ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each classification shall be subject to separate testing procedures and requirements.

(2) Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, and license classification or classifications the applicant is applying for, and shall include the following:

- (a) The full name of the person applying for the license;

- (b) If the applicant is a receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of the receiver or trustee, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group;
- (c) The principal business address of the applicant in the state and elsewhere;
- (d) The name and address of a person, who may be the Secretary of State, whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant;
- (e) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and
- (f) Any other necessary information prescribed by the department.

(3) The department shall require an applicant for a license to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the classifications he or she has applied for. The applicant shall also demonstrate a knowledge of the proper use of and calibration of the various equipment that he or she may have applied for a license to operate, including any pressurized, hand-sized devices. The examination shall require a working knowledge of:

- (a) The proper use of the equipment;
- (b) The hazards that may be involved in applying pesticides, including:
 1. The effect of drift of the pesticides on adjacent and nearby lands and other non-target organisms;
 2. The proper meteorological conditions for the application of pesticides and the precautions to be taken;
 3. The effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;
 4. The effect of the application of pesticides to wildlife in the area, including aquatic life;
 5. The identity and classification of pesticides used and the effects of their application in particular circumstances; and
 6. The likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects, and vegetation;
- (c) Calculating the concentration of pesticides to be used in particular circumstances;
- (d) Identification of pests to be controlled by common name only and the damages caused by the pests;
- (e) Protective clothing and respiratory equipment required during the handling and application of pesticides;
- (f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment that the applicant proposes to use; and
- (g) Applicable state and federal pesticide laws and regulations.

(4) If the department finds the applicant qualified to apply pesticides in the classifications he or she has applied for, if the applicant files the bond or insurance required under KRS 217B.130, and if the applicant applying for a license to engage in aerial application of pesticides has met all

of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he or she is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause, or the financial security required under KRS 217B.130 is not dated to expire at an earlier date, in which case the license shall be dated to expire upon the expiration date of the financial security.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 3, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 5. -- Created 1972 Ky. Acts ch. 130, sec. 6.

217B.070 Operator's license -- Fees.

(1) No person shall engage in the business of applying pesticides to the lands of another within this state at any time without a pesticide operator's license issued by the department. The department shall require an annual fee of twenty-five dollars (\$25) for each pesticide operator's license issued.

(2) No license shall be issued unless the applicant holds a valid certification within this category.

(3) No license shall be issued unless the applicant is registered as a dealer or is employed by a person who is registered as a dealer.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 4, effective July 14, 2000. -- Amended 1978 Ky. Acts ch. 384, sec. 69, effective July 17, 1978. -- Amended 1974 Ky. Acts ch. 148, secs. 1 and 6. -- Created 1972 Ky. Acts ch. 130, sec. 7.

217B.080 Applicator's license -- Fees -- Aerial applications.

(1) Except as provided in KRS 217B.090, it shall be unlawful for any person to act as an employee of a pesticide operator or dealer and apply pesticides manually, or as the applicator directly in charge of any equipment which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an applicator's license from the department. An applicator's license shall be in addition to any other license or permit required by law for the operation or use of any equipment. Any person applying for an applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. Application for a license to apply pesticides shall be accompanied by a license fee of ten dollars (\$10). The provisions of this section shall not apply to any individual who has passed the examination provided for in KRS 217B.060(3), and is a licensed pesticide operator. If the department finds the applicant qualified to apply pesticides in the classifications he has applied for after examinations as provided for in KRS 217B.060(3), and if the applicant applying for a license to engage in aerial applications of pesticides has met all of the requirements of the Federal Aviation Agency and the Transportation Cabinet to operate the equipment described in the application, the department shall issue a pesticide applicator license limited to the classifications for which he is qualified which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in KRS 217B.120.

(2) No license shall be issued unless the applicant holds a valid certification within this category.

(3) No license shall be issued unless the applicant is employed or supervised by a person who holds a valid operator's license.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 5, effective July 14, 2000. -- Amended 1978 Ky. Acts ch. 384, sec. 70, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 148, sec. 7. -- Created 1972 Ky. Acts ch. 130, sec. 8.

217B.090 Noncommercial applicator license -- Expiration -- Legal recourse.

(1) It shall be unlawful for any person to act as a noncommercial applicator without having obtained a noncommercial applicator license from the department. Any person applying for a noncommercial applicator's license shall file an application on a form prescribed by the department on or before January 1 of each year. The provisions of this section shall not apply to any individual who is a licensed pesticide operator or applicator. If the department finds the applicant qualified to apply pesticides, the department shall issue a limited license without a fee to a noncommercial applicator, which shall be valid only when the individual is applying pesticides on land owned, occupied, or managed by his or her employer. The noncommercial applicator license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior to that by the department for cause as provided for in KRS 217B.120.

(2) Employers of noncommercial applicators shall be subject to legal recourse by any person damaged by the application of any pesticide, and the action may be brought in the county where the damage or some part of the damage occurred.

(3) No license shall be issued unless the applicant holds a valid certification within this category.

(4) A limited license cannot be upgraded without re-testing.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 6, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 8. -- Created 1972 Ky. Acts ch. 130, sec. 9.

217B.100 Consultant's license -- Fee -- Qualifications -- Waiver.

(1) No person shall perform services as a pest control consultant without first procuring from the department a license in the classifications he has applied for under KRS 217B.060. Application for a license shall be on a form prescribed by the department and shall include the applicable information stipulated in KRS 217B.060(2). The application for a license shall be accompanied by an annual fee of fifty dollars (\$50).

(2) Each applicant for a pest control consultant's license shall be required to present to the department satisfactory evidence of training and experience providing a basic background to understand pest control principles. The applicant shall be required to pass satisfactorily a written examination to be prescribed by the department to demonstrate the applicant's specific knowledge under KRS 217B.060(3).

(3) If an applicant provides a copy of a valid Kentucky Certified Crop Advisor certification to the department, the test and fee for a consultant license may be waived.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 7, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 9. -- Created 1972 Ky. Acts ch. 130, sec. 10.

217B.103 Suspension, revocation, or modification of consultant's license -- Grounds -- Application for new license.

(1) The department may suspend for not longer than ten (10) days, pending inquiry, and, after opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any license issued under KRS 217B.100 if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this section:

- (a) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;
- (b) Made a pesticide recommendation not in accordance with the label registered as provided by KRS 217.541 to 217.640;
- (c) Violated any provision of this chapter or any administrative regulation promulgated by the department or of any lawful order of the department;
- (d) Failed to pay the original or renewal license fee when due;
- (e) Was guilty of gross negligence, incompetence, or misconduct in acting as a consultant, or used fraud or misrepresentation in making an application for a license or renewal of a license;
- (f) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license;
- (g) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with a licensed or unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person; or
- (h) Impersonated any state, county, or city inspector or official.

(2) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the license as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 8, effective July 14, 2000. -- Amended 1978 Ky. Acts ch. 384, sec. 71, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 148, sec. 26.

217B.105 Registration of pesticide dealers -- Fees -- Branch offices -- Required records.

(1) No person shall act in the capacity of a dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a dealer without having registered as a dealer with the department.

(2) Application for a dealer registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of fifty dollars (\$50). All registrations issued under this section shall expire on December 31 of the year for which they are issued. The registration for a dealer may be renewed annually upon application to the department, accompanied by a fee of fifty dollars (\$50) for each registration, on or before the first day of January of the calendar year for which the registration is issued.

(3) No person shall be registered as a dealer without proof of financial responsibility as required by KRS 217B.130.

(4) A dealer shall register each branch office location.

(5) Application for a branch office registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of twenty-five dollars (\$25). All registrations issued under this section shall expire on December 31. The registration for a branch office may be renewed annually upon application to the department, accompanied by a fee of twenty-five dollars (\$25) for each registration, on or before the first of January of the calendar year for which the registration is issued. No branch office registration may be issued unless the applicant is registered as a dealer.

(6) The department shall issue to each applicant who satisfies the requirements of this section a registration which entitles the applicant to conduct the business described in the application for the calendar year for which the registration is issued, unless the registration is sooner revoked or suspended.

(7) The department shall promulgate administrative regulations requiring dealers to maintain records with respect to their operations as it determines are necessary for the effective enforcement of this chapter. The records shall include, but not be limited to, brands and amounts of restricted use pesticides sold, and the buyer's name, address, use of the pesticide, and certification number. Records required under this section shall extend to financial data, sales data, shipment data, and personnel data. The records are to be retained for a period of two (2) years from the time of sale. For the purposes of enforcing the provisions of this chapter, any dealer shall, upon request of the department, furnish or permit the department at all reasonable times to have access to, and to copy, records as required by this section.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 9, effective July 14, 2000. -- Amended 1978 Ky. Acts ch. 384, sec. 72, effective June 17, 1978. -- Created 1974 Ky. Acts ch. 148, sec. 24.

217B.107 Dealer's responsibility.

Each dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of restricted use pesticides, and in all claims and recommendations for use or application of restricted use pesticides.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 10, effective July 14, 2000. -- Created 1974 Ky. Acts ch. 148, sec. 25.

217B.110 License or registration -- Late renewal -- Penalty -- Reexamination.

(1) If the application for renewal of any license or registration provided for in this chapter is not filed prior to March 1 in any year, a penalty of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal is issued.

(2) Any person holding a current valid license may renew the license for the next year without taking another examination unless the department determines that new knowledge related to classifications for which the applicant has applied makes a new examination necessary. However, if the license is not renewed by June 1 of each year, then the licensee shall be required to take another examination.

(3) No license will be issued or renewed unless certification is valid for the calendar year or the applicant has met training requirements that will allow for a renewal of certification within the calendar year for the license.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 13, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 10. -- Created 1972 Ky. Acts ch. 130, sec. 11.

217B.120 Assessment of civil penalties, suspension, revocation, delay, or modification of license or registration -- Causes.

The department may assess civil penalties as provided by KRS 217B.193, or may suspend, revoke, delay issuing, or modify the provision of any license or registration issued under this chapter, if it finds that the applicant or holder has committed any of the following acts, each of which is declared to be a violation of this chapter:

- (1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
- (2) Made a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.541 to 217.640;
- (3) Applied known ineffective or improper materials;
- (4) Operated faulty or unsafe equipment;
- (5) Operated application equipment in a careless or negligent manner;
- (6) Refused or, after notice, neglected to comply with the provisions of this chapter, the administrative regulations promulgated under this chapter, or of any lawful order of the department;
- (7) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;
- (8) Made false or fraudulent records, invoices, or reports;
- (9) Engaged in the business of the application of a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;
- (10) Operated unregistered equipment;
- (11) Used fraud or misrepresentation in making an application for a license or registration or renewal of a license or registration;
- (12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or registration;
- (13) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

- (14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
- (15) Impersonated any state, county, or city inspector or official;
- (16) Made a sale to, or distributed a restricted use pesticide to, an uncertified applicator;
- (17) Failed to obtain any license or registration required by this chapter;
- (18) Failed to obtain or maintain financial responsibility required by this chapter;
- (19) Failed to comply with the provisions of KRS 217B.190;
- (20) Failed to provide direct on-the-job supervision of a trainee by a licensed operator or applicator in the application of a pesticide;
- (21) Failed to follow notification and information requirements in accordance with KRS 217B.300, including:
 - (a) Failure to provide customer written information prior to application;
 - (b) Failure to place lawn marker;
 - (c) Failure to meet minimum requirements for lawn marker;
 - (d) Failure to furnish customer proper information at application; or
 - (e) Failure to furnish prior notification of application when requested; or
- (22) Failed to follow notification and information requirements in accordance with KRS 217B.320, including:
 - (a) Failure to place golf course marker immediately after application;
 - (b) Failure to meet minimum requirements for golf course marker; or
 - (c) Failure to furnish prior notification of application when requested.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 14, effective July 14, 2000. -- Amended 1992 Ky. Acts ch. 250, sec. 4, effective July 14, 1992. -- Amended 1978 Ky. Acts ch. 384, sec. 73, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 148, sec. 11. -- Created 1972 Ky. Acts ch. 130, sec. 12.

217B.130 Financial responsibility.

(1) The department shall not issue or renew a dealer registration to a dealer applying pesticides to the lands of others until the applicant has furnished evidence of financial responsibility with the department consisting either of a surety bond or a liability insurance policy, or certification of the bond or policy, protecting persons who may suffer legal damages as a result of the applicant.

(2) The amount of the surety bond or liability insurance as provided for in this section shall be not less than one million dollars (\$1,000,000). The surety bond or liability insurance shall be maintained at not less than that amount at all times during the licensed period. The department shall be notified ten (10) days prior to any reduction at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy. The department may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding one thousand dollars (\$1,000) for all applicators for the total amount of liability insurance or surety bond required. If the applicant has not satisfied the requirements of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the department unless the applicant

furnishes the department with a security bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides.

(3) Should the surety furnished become unsatisfactory, the applicant shall upon notice execute a new bond or insurance and shall he fail to do so, the department shall cancel the registration and it shall be unlawful for the person to engage in the business of applying pesticides until the bond or insurance is brought into compliance with the requirements of subsection (2) of this section and the registration is reinstated by the department.

(4) Nothing in this chapter shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though the use conforms to the administrative regulations of the department.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 15, effective July 14, 2000. -- Amended 1980 Ky. Acts ch. 391, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 145, sec. 1, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 148, sec. 12. -- Created 1972 Ky. Acts ch. 130, sec. 13.

217B.140 Claim of damage -- When filed -- Effect -- Inspection of damaged property.

(1) The person claiming damages from pesticide application shall file with the department a written statement claiming that he has been damaged, on a form prescribed by the department, within sixty (60) days after the date that damages occurred, or prior to the time that twenty-five percent (25%) of a crop damaged has been harvested. The statement shall contain, but shall not be limited to, the name of the person responsible for the application of the pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed, and the date on which it is alleged that the damage occurred. The department shall prepare a form to be furnished to persons to be used in those cases and the form shall contain other requirements as the department may deem proper. The department shall, upon receipt of the statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, for the damages claimed, and furnish copies of the statements as may be requested.

(2) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file a report shall not be a violation of this chapter. If the person failing to file the report is the only one injured from the use or application of a pesticide by others, the department may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or registration issued under this chapter until the report is filed.

(3) When damage is alleged to have been done, the claimant shall permit the licensee, registration holder, and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or non-target organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit the observation and examination of the damaged lands shall automatically bar the claim against the licensee or registration holder.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 16, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 13. -- Created 1972 Ky. Acts ch. 130, sec. 14.

217B.150 Records -- Time held.

The department shall require licensees to maintain records with respect to applications of pesticides. Such relevant information as the department may deem necessary may be specified by regulation. Such records shall be kept for a period of three (3) years from the date of the application of the pesticide to which such records refer, and the department shall, upon request in writing, be furnished with a copy of such records forthwith by the licensee.

History: Amended 1974 Ky. Acts ch. 148, sec. 14. -- Created 1972 Ky. Acts ch. 130, sec. 15.

217B.160 Inspection of equipment.

The department may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by regulation.

History: Amended 1974 Ky. Acts ch. 148, sec. 15. -- Created 1972 Ky. Acts ch. 130, sec. 16.

217B.170 Annual fee for registering equipment -- Inspections -- License plate displayed on equipment.

(1) The department shall require an annual fee of ten dollars (\$10) for each aircraft to be registered and a fee of ten dollars (\$10) for each piece of ground equipment to be registered, in the business of applying pesticides to the lands of another within this state. Should any equipment fail to pass inspection under KRS 217B.160, the department shall, pending inquiry and reinspection, suspend or revoke the registration. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with applicable laws and administrative regulations.

(2) All registered equipment shall be identified by a license plate or decal furnished by the department, and shall be affixed in a location and manner upon the equipment as prescribed by the department.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 17, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 16. -- Created 1972 Ky. Acts ch. 130, sec. 17.

217B.180 Exemptions from licensing or registration.

(1) The provisions of KRS 217B.020 to 217B.180 relating to licenses or registration and requirements for their issuance shall not apply to any farmer owner of ground equipment applying non-restricted use pesticides for himself or his farmer neighbors if he applies the pesticides for his farmer neighbors without compensation other than trading of personal services.

(2) The licensing or registration provisions of KRS 217B.020 to 217B.180 shall not apply to any person using hand-powered equipment, devices, or contrivances to apply non-restricted use pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve (12) feet high, as an incidental part of his activity of taking care of his household lawn and yard or those of his neighbors, on the condition that the person shall not publicly hold himself out as being in the business of applying pesticides, and shall not accept compensation other than the trading of personal services for the activity.

(3) KRS 217B.020 to 217B.180 shall not apply to operators presently licensed and regulated under the provisions of KRS 249.250 to 249.340 on June 17, 1978, except that if required by EPA regulations the persons may be issued, without additional fees or examination, an

applicator's license to enable them to purchase and use restricted use pesticides in accordance with the requirements of the Federal Environmental Pesticide Control Act of 1972.

(4) The registration provisions of KRS 217B.105 shall not apply to any noncommercial applicator.

(5) The licensing provisions of KRS 217B.080 shall not apply to any trainee.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 18, effective July 14, 2000. -- Amended 1978 Ky. Acts ch. 81, sec. 18, effective June 17, 1978; and ch. 145, sec. 2, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 148, sec. 17. -- Created 1972 Ky. Acts ch. 130, sec. 18.

217B.185 Pesticide sales agent's license -- Application -- Fee -- Renewal -- Sale or distribution of pesticides restricted to licenses.

(1) The department shall establish a licensure program for pesticide sales agents. The department shall require an applicant for licensure to show upon examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides.

(2) Application for a pesticide sales agent license shall be in the form and shall contain information prescribed by the department. Each application shall be accompanied by a fee of five dollars (\$5). All licenses issued under this section shall expire on December 31 of the year issued. The license for a pesticide sales agent may be renewed annually upon application to the department, accompanied by a fee of five dollars (\$5) for each license, on or before the first day of January of the calendar year for which the license is issued.

(3) The department shall issue to each applicant who meets the requirements of this section a license that entitles the applicant to hold himself or herself out as a pesticide sales agent.

(4) No person shall hold himself or herself out as a pesticide sales agent unless that person is licensed as provided for in this section.

(5) No person shall make recommendations for the use or application of pesticides unless that person is licensed as provided for in this section.

(6) No person shall sell or distribute restricted use pesticides to the final user unless that person is licensed as provided for in this section.

(7) No license shall be issued unless the applicant holds a valid certification within this category.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 172, sec. 11, effective July 14, 2000.

217B.187 Registration of dealer's trainees -- Application -- Fee -- Period registration valid.

(1) The department shall establish and administer a program to register trainees.

(2) A dealer shall not employ a trainee to apply pesticides manually or as the applicator directly in charge of any equipment that is licensed or should be licensed under the provisions of

this chapter for the application of any pesticide without registering the trainee with the department. It shall be unlawful for any person to act as a trainee without being registered.

(3) Application for a trainee registration shall be in the form and shall contain the information prescribed by the department. Each application shall be accompanied by a fee of five dollars (\$5).

(4) Trainee registration shall be valid for ninety (90) days and shall not be reissued or renewed.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 172, sec. 12, effective July 14, 2000.

217B.190 Disposal and storage of pesticides -- Use not in accordance with label or of restricted use pesticides.

(1) No person shall discard or store any pesticide or pesticide containers in a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or pollinating insects, or to pollute any waterway in a way harmful to any wildlife.

(2) No person shall use any registered pesticide in a manner not in accordance with its label.

(3) No person shall purchase, use, or supervise the use of, a restricted use pesticide unless the person is certified in a classification which permits the purchase, use, or supervision of use.

(4) No person shall distribute a restricted use pesticide to a person who does not have the appropriate certification, registration, or license as prescribed in this chapter.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 19, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 18. -- Created 1972 Ky. Acts ch. 130, sec. 19.

217B.193 Notice of noncompliance -- Civil penalty assessment and development of schedule.

(1) If any of the requirements of this chapter or administrative regulations promulgated under this chapter have not been complied with, the Commissioner shall cause a notice of violation to be issued. The Commissioner may issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990, or the Commissioner may set forth in his notice a reasonable time period, but not more than ninety (90) days, for the abatement of the violation. If any licensee or registration holder has not abated the violation within the period of time prescribed in the notice of violation, the Commissioner shall issue an order for immediate compliance and assess the civil penalty provided for in this section and in KRS 217B.990. The notice of noncompliance shall be mailed to the licensee or registration holder by certified mail, return receipt requested, addressed to the permanent address as shown on department records. The notice of noncompliance shall specify in what respect the licensee or registration holder has failed to comply with this chapter or administrative regulations promulgated under this chapter. If the licensee or registration holder has not complied with the requirements set forth in the notice of noncompliance within the time limit allowed, the license or registration may be revoked as provided in this chapter.

(2) The Commissioner shall develop a method for calculating the civil penalty for a violation, or failure to abate a violation, within the prescribed time period as authorized by this section, and he shall promulgate a schedule of the civil penalties in an administrative regulation.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 20, effective July 14, 2000. -- Created 1992 Ky. Acts ch. 250, sec. 2, effective July 14, 1992.

217B.195 Effect of use of pesticides or fertilizers -- Limit on liability for.

(1) No person engaged in farming who has applied or used or arranged for the application or use of any fertilizer, plant growth regulator, or pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, shall be responsible or liable without proof of negligence or lack of due care, for any damages or response costs relating to any direct or indirect discharge or release into, or actual or threatened pollution of, the land, waters, air, or other resources of the state that is or may be associated with or resulting from the application or use, provided that:

- (a) The application or use was in a manner consistent with the labeling of the fertilizer, plant growth regulator, or pesticide and in accordance with acceptable agricultural management practices and all applicable state and federal laws and regulations at the time of the application or use;
- (b) The state or federal government, or any of its agencies, had approved, recommended, or permitted the application or use and there is no finding that any conditions of the approval, recommendation, or permit were violated, or that warnings or limitations regarding the application or use were ignored; and
- (c) The fertilizer, plant growth regulator, or pesticide was licensed by or registered with the state or federal government at the time of the application or use and the person, firm, or corporation knew of no special geological, hydrological, or soil type condition existing on the land which rendered the application or use likely to cause pollution. No person, firm, or corporation shall be liable based solely on ownership of the land where the application or use took place.

(2) For the purposes of this section, farming means the cultivation of land used for the production of agricultural crops, livestock or livestock products, forestry or forestry products, milk or dairy products, poultry or poultry products, aquaculture or aquacultural products, and horticulture or horticultural products.

(3) Nothing in this section shall be construed to prohibit any cause of action based on strict tort liability against any manufacturer of the fertilizer, plant growth regulator, or pesticide.

(4) Any and all ordinances of any unit of local government now in effect or hereafter adopted that are in conflict with this section shall be void.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 307, sec. 6, effective July 13, 1990.

217B.200 Grievances -- Hearing.

Any person aggrieved by any action of the department may obtain a review thereof by filing in the Franklin Circuit Court within thirty (30) days of notice of the action a written petition praying that the action of the department be set aside. A copy of such petition shall forthwith be delivered to the department, and within sixty (60) days thereafter the department shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside or modify the action of the department, except that the findings of the department as to the facts, if supported by substantial evidence, shall be conclusive.

History: Amended 1974 Ky. Acts ch. 148, sec. 19. -- Created 1972 Ky. Acts ch. 130, sec. 20.

217B.203 Hearings -- Appeal of Commissioner's order.

(1) All hearings required by KRS 217B.010 to 217B.990 shall be conducted in accordance with KRS Chapter 13B.

(2) Appeals may be taken from all final orders of the Commissioner to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 130, effective July 15, 1996. -- Created 1992 Ky. Acts ch. 250, sec. 3, effective July 14, 1992.

217B.210 Information and education -- Revision of license examinations, training courses, and other materials.

(1) The department may publish information and conduct short courses of instruction in the safe use and application of pesticides.

(2) The department shall, at least once each year, review and update, to incorporate current information, the license examinations given by the department and all training courses approved by the department.

(3) The department shall revise the license applications given by the department, all training courses approved by the department, and all educational materials to include information on preventing contamination of groundwater.

Effective: Amended 1990 Ky. Acts ch. 307, sec. 3, effective July 13, 1990. -- Amended 1974 Ky. Acts ch. 148, sec. 20. -- Created 1972 Ky. Acts ch. 130, sec. 21.

217B.220 Issuance of subpoenas.

The department may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or registration issued under the provisions of this chapter.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 21, effective July 14, 2000. -- Amended 1974 Ky. Acts ch. 148, sec. 21. -- Created 1972 Ky. Acts ch. 130, sec. 22.

217B.230 Inspection -- Search warrants.

(1) For the purpose of carrying out the provisions of this chapter, the department or any of its employees may enter upon any public or private premises at reasonable times, in order:

- (a) To have access for the purpose of inspecting any equipment subject to this chapter and such premises on which such equipment is kept or stored; or
- (b) To inspect lands actually or reported to be exposed to pesticides; or
- (c) To inspect storage or disposal areas; or
- (d) To inspect or investigate complaints of injury to humans or land; or
- (e) To sample pesticides being applied or to be applied.

(2) Should the department be denied access to any land where such access was sought for the purposes set forth in this chapter, the department may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may, issue the search warrant for the purposes requested.

History: Amended 1974 Ky. Acts ch. 148, sec. 22. -- Created 1972 Ky. Acts ch. 130, sec. 23.

217B.240 Repealed, 1974.

Catchline at repeal: Delegation of duties.

History: Repealed 1974 Ky. Acts ch. 148, sec. 29. -- Created 1972 Ky. Acts ch. 130, sec. 24.

217B.250 Cooperation with governmental agencies and educational institutions.

The department may cooperate or enter into formal agreements with any other agency or educational institution of this state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this chapter and of securing uniformity of regulations.

History: Amended 1974 Ky. Acts ch. 148, sec. 23. -- Created 1972 Ky. Acts ch. 130, sec. 25.

217B.260 Pesticide Advisory Board.

A Pesticide Advisory Board may be appointed by the Commissioner of Agriculture to assist in the promulgation of regulations and the administration of this chapter.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 295, sec. 64, effective July 15, 1980. -- Created 1974 Ky. Acts ch. 148, sec. 27.

217B.270 Prohibition against local regulation of pesticides for agriculture and silviculture.

(1) The Commonwealth of Kentucky hereby determines that the citizens of the state benefit from a system of safe, effective, and scientifically sound pesticide regulation on agricultural and silvicultural land. The Commonwealth further finds that a system of pesticide regulation which is consistent, coordinated, and comports with both federal and state technical expertise is essential

to the public health, safety, and welfare, and that local regulation of pesticides does not materially assist in achieving these benefits.

(2) No city, town, county, or other political subdivision of the Commonwealth shall adopt or continue in effect any ordinance, resolution, rule, or regulation regarding agriculture and silviculture pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.

(3) Nothing in this section shall be construed to abrogate any authority afforded by the state statutes to any program cabinet established under KRS Chapter 12 or any state or federal mandated hazardous materials regulations or fire safety codes and comprehensive hazardous materials management program.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 303, sec. 1, effective July 14, 1992.

Lawn Care Applications

217B.300 Definitions -- Notification and information requirements -- Records.

(1) The following definitions apply to this section:

(a) **"Application" means:**

the spreading of lawn chemicals in liquid or dry form on a lawn;

(b) **"Applicator for hire" means:**

any person who makes an application of lawn chemicals to a lawn for compensation, including applications made by an employee to lawns owned, occupied or managed by his employer;

(c) **"Customer" means:**

a person who makes a contract, either written or verbal, with an applicator for hire to apply a pesticide to a lawn;

(d) **"Lawn" means:**

land area covered with turf kept closely mown, except land areas used for agricultural production, commercial production of turf, or land situated within three (3) feet of the foundation of a structure when a pesticide is applied to this area as a preventive or control measure for structural pests;

(e) **"Lawn chemicals" means:**

fertilizers, pesticides, or defoliants applied or intended for application to lawns;

(f) **"Structural pest" means:**

a pest which commonly invades or attacks dwellings or structures; and

(g) **"Turf" means:**

the upper stratum of soils bound by grass and plant roots into a thick mat.

(2) The following notification requirements shall be met:

- (a) An applicator for hire shall provide a customer at the time of entering into a contract, with written information concerning lawn chemicals, application procedures, and other general guidelines about the safe use of lawn chemicals;
- (b) Immediately following application of lawn chemicals to a lawn, the applicator shall place a lawn marker at a prominent location in the lawn;
- (c) The lawn marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;
- (d) Lettering on the lawn marker shall be in a contrasting color and shall read on one side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) inches in height. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;
- (e) The lawn marker shall be removed and discarded by the property owner or resident, or other person authorized by the property owner or resident, the day following application;
- (f) For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property; and
- (g) For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that lawn chemicals have been applied to the lawn.

(3) At the time of application of lawn chemicals to a lawn, an applicator for hire shall provide the following information to the customer, either homeowner or landlord, for each lawn chemical used, and shall record and maintain at the business address the following information relating to the application of each lawn chemical:

- (a) The brand name or common name of the pesticide applied;
- (b) The pesticide type;
- (c) The fertilize rate and analysis;
- (d) The reason for use;
- (e) The concentration of end use product applied to the lawn, the rate of application, and the total gallons of end use product applied to the lawn;
- (f) Any special instruction appearing on the label of the lawn chemical product applicable to the customer's use of the lawn following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration;
- (g) The name and the state applicator license or certificate number of the individual actually making the application;
- (h) Customer name, address, and date of application; and
- (i) Total area of lawn treated.

(4) Any customer of an applicator for hire, or a neighbor whose residence is adjoining to a customer of an applicator for hire, may request prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator for hire and providing his name, address, and telephone number. In this event, the applicator for hire shall provide

notification in writing, in person, or by telephone, of the date and approximate time of application. If an applicator for hire is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 172, sec. 22, effective July 14, 2000. -- Created 1990 Ky. Acts ch. 85, sec. 1, effective January 1, 1991.

217B.320 Exemption from provisions of KRS 217B.300 -- Definitions -- Notification and information requirements.

(1) The provisions of KRS 217B.300 relating to notification and information requirements shall not apply to any golf course or its employees.

(2) As used in this section:

- (a) "Application" means the spreading of plant-regulating materials in liquid or dry form on a golf course;
- (b) "Golf course" means land on which turf and ornamental care, including application of pesticides or fertilizer and storage of pesticides or fertilizer, is done for the purpose of preparing the land for use in the game of golf;
- (c) "Plant-regulating materials" means fertilizers, pesticides, or defoliants applied or intended for application to a golf course; and
- (d) "Turf" means the upper stratum of soils bound by grass and plant roots into a thick mat.

(3) The following shall be required by a golf course relating to records, notification, and information requirements:

- (a) Immediately following application of plant-regulating materials on a golf course, the applicator shall place a golf course marker on the number-one (1) and number-ten (10) tees;
- (b) The golf course marker shall consist of, at a minimum, a four (4) inch by five (5) inch white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length;
- (c) Lettering on the golf course marker shall be in a contrasting color and shall read on one side "PLANT-REGULATING MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inches in height. The golf course marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator;
- (d) The golf course marker may be removed by the applicator or other personnel authorized by the golf course management the day following application;
- (e) Any person whose residence directly adjoins a golf course may request prior notification of a plant-regulating material application by contacting the golf course superintendent's office and providing his or her name, address, and telephone number. If requested, the golf course shall provide notification in writing, in person, or by telephone. In the event the golf course cannot provide advance notice, the person shall be contacted at the time of application. If the golf course is unable to

provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence; and

- (f) Material safety data sheets for each plant-regulating material shall be in an area of the superintendent's office where they can be easily read and accessible by patrons of the golf course.

(4) At the time of application of plant-regulating materials to a golf course, an applicator shall record and maintain the following information for each plant-regulating material used:

- (a) The brand name or common name of the pesticide applied;
- (b) The pesticide type;
- (c) The fertilize rate and analysis;
- (d) The reason for use;
- (e) The concentration of end use product applied to the golf course, the rate of application, and the total gallons of end use product applied to the golf course;
- (f) The location of area treated;
- (g) Any special instruction appearing on the label of the plant-regulating material applicable to the golf course use following application and any other precautionary or hazard information appearing on the label as applicable to the end use concentration; and
- (h) The name and the state applicator license or certification number of the individual actually making the application.

(5) This record shall be maintained in the golf course superintendent's office and shall be readily available to review on request. This record shall be retained for three (3) years and be an inspectable item for the department.

Effective: July 14, 2000

History: Created 2000 Ky. Acts ch. 172, sec. 23, effective July 14, 2000.

Commercial Structural Pest Control and Fumigation

217B.500 Definitions.

As used in KRS 217B.505 to 217B.585 unless the context requires otherwise:

(1) "Carpenter ants" shall mean:

those ants that damage wooden structures and are classified within the genus *Camponotus*.

(2) "Fumigation" shall mean:

the use of poisonous gases for the control of pests in enclosed spaces including but not restricted to structures such as box cars, warehouses, ships, barges, homes, garages and granaries.

(3) "Wood destroying organisms" shall mean:

those organisms that cause damage to the wood used in the construction of commercial or residential establishments including the insects defined under subsections (3), (4), (5), (6), and (7) of this section.

(4) "Structural pest control" shall mean:

the control of termites or pests, including the identification of infestations or infections; the making of inspections, inspection reports, recommendations; offering advice regarding control

methods or sanitation procedures relative to termites and general pests; estimates, or bids, whether oral or written, with respect to such infestations; issuing contracts or submitting bids for, advertising for or performing services designated to prevent, control, repel or eliminate such infestations by the use of pesticides, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and repelling wood destroying organisms and general pests in household structures, commercial buildings, and other structures (including those in all stages of construction) or the contents thereof, and outside areas, including the treatment of railroad cars, trucks, ships and airplanes or any one (1) or any combination thereof. Excluded under this definition are textile manufacturers, cleaners or furriers who treat fabrics or furs in their place of business exclusively.

(5) "Applicant" shall mean:

any named natural person applying for an applicator license or a manager's license.

(6) "Applicator" shall mean:

the license holder for a structural pest control firm and shall be the designated natural person, within a firm, partnership, corporation, organization, association or any combination thereof, who manages or is in charge of a business of structural pest control including advertising, soliciting or performing any of the services covered under the provisions of KRS 217B.505 to 217B.585.

(7) "Manager" shall:

hold a manager's license and be a designated natural person within a firm who may perform the functions of an applicator but must always work under the full-time supervision of an applicator.

(8) "License" shall mean:

an instrument authorizing a person to act or engage in structural pest control operations as an applicator or manager. The license may be issued by the department upon certification of the applicant's qualification and upon recommendation of the Pest Control Advisory Board.

(9) "Office" shall mean:

the point of headquarters or location of the principal operation of an applicator or a point or location from which branch offices or operations are supervised.

(10) "Branch offices" shall mean:

any location other than the main or home office or point of headquarters of principal operation of a firm from which structural pest control activities are carried out. The maintenance of personnel and/or where pesticides are stored and mixed (other than in service vehicles) or a point from which sales are made or solicited, or service rendered shall constitute a branch office within the meaning of KRS 217B.505 to 217B.585. Each branch office shall have a licensed manager.

(11) "Full-time supervision" shall mean:

the act or process whereby professional work or services are made by a competent person acting under the instructions and control of an applicator or manager who is responsible for the action of that person and who is available if and when needed even though such applicator or manager is not physically present at the time and place that professional work or services are performed.

(12) "Reserve applicator license holder" shall be:

that person within a designated structural pest control firm or structural fumigation firm who maintains a current applicator's license but is not the designated license holder for that firm. This license holder can become the designated license holder for said firm only in the event of the death, incapacitation or removal of the original license holder other than by bankruptcy or sale of the firm.

(13) "Board" means:

the Pest Control Advisory Board.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 295, sec. 65, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 81, sec. 1, effective June 17, 1978.

217B.505 Pest Control Advisory Board.

There shall be established a seven (7) member Pest Control Advisory Board which shall consist of the following members:

- (1) President of KPCA or his designated representative from the KPCA board of directors.
- (2) One (1) member of KPCA appointed by the Governor from a list of persons in the pest control industry submitted by the KPCA, who shall be residents of the Commonwealth. This member shall serve a two (2) year term.
- (3) The chairman of the University of Kentucky Department of Entomology or his designated representative.
- (4) One (1) other member of the University of Kentucky Department of Entomology appointed by the chairman of the Department of Entomology.
- (5) Two (2) members of the department appointed by the Commissioner of Agriculture.
- (6) One (1) consumer member appointed by the Commissioner of Agriculture. This member shall serve a two (2) year term.
- (7) If a vacancy occurs on the board, it shall be filled in the manner designated in this section.
- (8) At the first meeting of the Pest Control Advisory Board, a chairman, a vice chairman, and a secretary shall be elected for one (1) year. They shall serve at the pleasure of the board. The chairman or the vice chairman shall preside at all meetings and vote as any other member. The secretary of the board shall maintain accurate minutes of each meeting of the board.
- (9) Five (5) members of the board shall constitute a quorum and any action or order of the board shall require the presence of a quorum and the approval of a simple majority of the members present.

- (10) The board shall meet on the first Thursday of alternate months beginning with January at Frankfort or such other place in Kentucky as the chairman shall direct. If the first Thursday falls on a holiday, the meeting shall take place the following Thursday. The secretary of the board shall notify members of upcoming meetings ten (10) days prior to the meeting. However, four (4) members of the board may call a special meeting of the board on ten (10) days' notice to the other members.
- (11) Members of the board shall serve without compensation; however, members who are not employees of the Commonwealth shall be entitled to reimbursement by the department for actual expenses incurred in carrying out the duties of the board.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 245, sec. 1, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 295, sec. 66, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 81, sec. 2, effective June 17, 1978.

217B.510 Powers and duties of board.

The Pest Control Advisory Board shall have the following powers and duties:

- (1) To review commercial structural pest control and commercial structural fumigation enforcement proceedings and to make written recommendations for further action to the department.
- (2) To hold hearings on the denial of an application for a license pursuant to KRS 217B.540.
- (3) To review commercial structural pest control and commercial structural fumigation applicator license applications to ensure that the applicants meet state pest control licensing requirements and to make recommendations to the department.
- (4) To review the state pest control licensing examinations.
- (5) To assist the department in administering the licensing examinations for commercial structural pest control applicators and commercial structural fumigation applicators and to make recommendations to the department.
- (6) To serve as a resource group to keep the department informed of current technical advancements in the pest control industry.
- (7) To recommend reasonable rules and regulations concerning the following matters:
 - (a) Standards of application and workmanship.
 - (b) Proper health and safety precautions.
 - (c) Requirements for standardized structural pest control contracts.
 - (d) Furnishing of reports and information necessary for the Pest Control Advisory Board to carry out the provisions of KRS 217B.515 to 217B.585.
- (8) To assist the department in administering the licensing examinations for the commercial structural pest control applicators and commercial structural fumigation applicators and to make recommendations to the department.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 250, sec. 5, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 295, sec. 67, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 81, sec. 3, effective June 17, 1978.

217B.520 Applicator's or manager's license.

- (1) Applicants for an applicator's license shall be required to:
 - (a) Be a legal resident of the United States.
 - (b) Be eighteen (18) years of age.

- (c) Have at least two (2) years of verified experience employed with a licensed structural pest control applicator. Experience shall be verified by the license holder of the company from which the applicant has obtained his experience. A person with a bachelor's degree, a master's degree or a doctoral degree in entomology from an accredited college or university shall qualify with no experience. Educational background shall be verified with official transcripts from the institution or institutions granting the degree.
- (2) Applicants for a manager's license shall be required to have one (1) year's experience as a service technician or as a salesperson for a licensed pest control company.
- (3) No person convicted of fraud or misrepresentation may apply for an applicator's or manager's license.

Effective: June 17, 1978.

History: Created 1978 Ky. Acts ch. 81, sec. 5,

217B.525 Application for license.

- (1) Application for license shall be submitted on a form furnished by the department, and shall be filed no later than thirty (30) days in advance of the next examination date.
- (2) The department shall notify the applicant within ten (10) days of the examination date whether or not he has passed the examination.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 6, effective June 17, 1978.

217B.530 Examinations for licenses.

- (1) Applicator licensing examinations for commercial structural pest control and commercial structural fumigation shall be given the second Tuesday in May and the second Tuesday in November unless such date shall be a holiday. In such case the examination shall be given on the third Tuesday of that month. Manager licensing examinations shall be administered by the department as needed.
- (2) An applicant shall be allowed to take two (2) consecutive licensing examinations but if the applicant has not passed the licensing examination after two (2) attempts he must then wait one (1) year and must complete and pass a training course approved by the department before reapplying to take the examination one (1) more time. If the applicant does not pass the examination the third or subsequent time, he shall have to wait two (2) years and complete and pass an additional training course approved by the department before reapplying to take the examination.
- (3) License testing fees shall be fifty dollars (\$50) for each examination each time the examination is taken.
- (1) Written examinations shall be given to all qualified applicants. No oral examinations shall be given.
- (2) The commercial structural pest control examination shall consist of no less than two hundred sixty (260) written questions and no less than forty (40) identification specimens. The commercial structural fumigation examination shall consist of no less than eighty (80) written questions and no less than twenty (20) identification specimens. The manager's licensing examination shall consist of no less than ninety (90) written questions and no less than ten (10) identification specimens.
- (3) The licensing examination shall be a timed examination. Five (5) hours shall be allowed for the commercial structural pest control examination and two (2) hours for the commercial

structural fumigation examination. Timing for the manager's licensing examinations shall be set by regulation.

(4) The applicant must achieve a grade of at least 70% correct on the written questions and at least 70% correct on the identification to pass the licensing examination. The license applicant must take and pass the entire examination to become licensed.

(5) The commercial structural pest control and the commercial structural fumigation examination shall also serve as the examination necessary to fulfill federal commercial pesticide applicator certification requirements, including industrial, institutional, structural and health related pest control.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 7, effective June 17, 1978.

**217B.535 Applicator license holder restrictions -- Licenses not transferable or assignable -
- Effect of sale of pest control firm -- Annual registration.**

(1) There shall be only one (1) applicator license holder per company with one (1) or more reserve applicator license holders allowed for each company.

(2) A license issued by the department shall not be transferable or assignable. In the event of the death or incapacitation of a licensed operator, his heirs, representatives, other persons or legal entities, which may have an interest in the structural pest control business in which the deceased was the license holder, shall be allowed a maximum of twelve (12) months from such death to obtain a qualified licensed applicator to operate or manage said business under the provisions of KRS 217B.515 to 217B.585. A full-time certified applicator shall be employed by such business for the application and supervision of restricted use pesticides.

(3) If a pest control firm is sold, the purchaser must comply with all state laws and regulations. If the purchaser fails to comply he has ninety (90) days to dissolve the business. The seller must notify the buyer that the department regulates the pest control industry in Kentucky. The seller must notify the department that the business has been sold within ten (10) days after the sale. If the license holder for a pest control firm leaves or is terminated for reasons other than death or sale of the firm, the firm must notify the department of this change within ten (10) days and must acquire a license holder at the next testing period or must be granted an emergency license by the department for a period not to exceed the following scheduled examination. If the pest control firm fails to meet these requirements, they must dissolve the business within ninety (90) days. A full-time certified applicator shall be employed by such business for the application and supervision of restricted use pesticides.

(4) It shall be illegal to solicit business or advertise without a valid commercial structural pest control applicator's license or commercial structural fumigation applicator's license.

(5) Each applicator shall register annually and shall pay an annual fee of one hundred dollars (\$100) for each place of business maintained in Kentucky. Every nonresident owner shall designate a resident agent upon whom service of notice of process may be made to enforce the provisions of KRS 217B.515 to 217B.585.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 8, effective June 17, 1978.

217B.540 Hearing on denial of application.

The department shall after denying an application for a license, if petitioned by the applicant within ten (10) days of notification, schedule a hearing before the Pest Control Advisory Board. The hearing shall be conducted in accordance with KRS Chapter 13B.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 126, effective July 15, 1996. -- Created 1978 Ky. Acts ch. 81, sec. 9, effective June 17, 1978.

217B.545 Suspension, revocation, or modification of applicator's or manager's license -- Procedure -- Waiting period for eligibility for reapplication.

- (1) The department may suspend, revoke, or modify the provision of any applicator's or manager's license issued under KRS 217B.515 to 217B.520 if it finds that the licensee has committed any of the acts set forth in KRS 217B.550.
- (2) The license holder shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of license to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (3) If a hearing is not requested as provided for in subsection (2) of this section, the department may suspend, revoke, or modify the license once the ten (10) day hearing request filing period has passed.
- (4) Any licensee whose license is revoked under the provisions of this section shall not be eligible to apply for a new license until time has elapsed from the date of the final order revoking the license as established by the department, not to exceed two (2) years, or if an appeal is taken from the final order or revocation, not to exceed two (2) years from the date of the final order or final judgment sustaining the revocation.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 127, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 250, sec. 6, effective July 14, 1992. -- Created 1978 Ky. Acts ch. 81, sec. 10, effective June 17, 1978.

217B.550 Violations.

The following acts are declared to be a violation of KRS 217B.515 to 217B.585:

- (1) Making any material representation for the purpose of defrauding the public, or using any method or material that is not reasonably suited for the purpose for which it was employed, by any licensed applicator, manager or his solicitor or agent.
- (2) Failure of a licensed operator or manager to comply with any of the provisions of this chapter or any reasonable rule or regulation promulgated by the department.
- (3) Failure to pay any final judgment rendered against any licensed operator or manager, his employee, solicitor or representative by reason of liabilities resulting from activities under KRS 217B.515 to 217B.585.
- (4) Failure to make the registration and pay the annual licensing fees as required by KRS 217B.535.
- (5) Failure to attend training courses approved by the department on recommendation of the Pest Control Advisory Board as specified by the Kentucky state plan.
- (6) The making of false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized.
- (7) The making of a pesticide recommendation or application not in accordance with the label registered by the department under KRS 217.542 to 217.640.
- (8) The application of known improper materials.
- (9) Knowingly operating faulty or unsafe equipment.

- (10) Knowingly operating in a faulty, careless or negligent manner.
- (11) Failure to keep and maintain the records required by KRS 217B.510, or to make reports when and as required.
- (12) The making of false or fraudulent records, invoices or reports.
- (13) Engaging in the business of the application of a pesticide without having a licensed applicator or operator in direct supervision.
- (14) Using fraud or misrepresentation in making an application for a license or renewal of a license.
- (15) Failure to comply with any limitations or restrictions on or in a duly issued license, permit or certification.
- (16) Aiding or abetting a licensed or an unlicensed person to evade the provisions of KRS 217B.515 to 217B.585, combining or conspiring with such a licensed or an unlicensed person to evade the provisions of KRS 217B.515 to 217B.585, or allowing one's license to be used by an unlicensed person.
- (17) The making of false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.
- (18) Impersonating any state, county or city inspector or official.

Effective: July 15, 1980

History: Amended 1980 Ky. Acts ch. 188, sec. 219, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 81, sec. 11, effective June 17, 1978.

217B.555 Pesticide storage restrictions -- Restricted use pesticides.

- (1) No person shall knowingly discard or store any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any waterway in a way harmful to any wildlife therein.
- (2) No person shall purchase, use or supervise the use of, a restricted use pesticide unless such person be certified in a classification which permits such purchase, use or supervision of use.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 12, effective June 17, 1978.

217B.560 Training of personnel.

A pest control company shall be required and responsible to use only trained personnel such that a new employee shall work under the full-time supervision of a certified applicator for at least thirty (30) days and sales and service personnel shall receive a training course approved by the department on recommendation of the Pest Control Advisory Board.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 13, effective June 17, 1978.

217B.565 Identification of vehicles -- Employee identification cards.

Each business establishment or business entity shall at all times have its vehicles, which are actively and regularly engaged in service work marked for easy identification with at least the letters "L.P.C.O." two (2) inches high, and the company name thereon, followed by the license number of the business establishment or business entity. Identification of vehicles may be permanent or removable; however, signs shall accompany the vehicle at all times for purpose of identification. Each licensed business establishment or business entity shall furnish each employee performing work or soliciting business an identification card to be secured from the

department and said identification card shall be carried on his or her person at all times for the purpose of identification of the employee to the department or to the person or persons for whom such work is being performed. It is the responsibility of every business establishment or business entity issuing identification cards to collect any and all cards, or produce proof that a reasonable effort was made to collect same, from employees whose employment has terminated with that company. Identification cards collected in this manner shall be mailed to the department.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 14, effective June 17, 1978.

217B.570 Burden of responsibility.

The burden of responsibility shall rest upon the applicator for selection and use of proper chemicals, and also for the correct formulation and dosages used unless otherwise specified in the rules and regulations. However, the department or its agents shall have authority at reasonable times during regular business hours to examine and test any and all chemicals used or being used or bought, held or stored for the purpose of being used for wood destroying organisms or general pest prevention or control by any person having a license issued, whether then in use or not. The department or its agent shall have the authority to inspect equipment and all storage and disposal areas. The department or its agent shall have the authority at reasonable times during regular business hours to inspect and observe the manner in which a particular pesticide is applied to insure that such is being done properly.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 15, effective June 17, 1978.

217B.575 Notification of change of address.

Each license holder shall be required to notify the department of any change of address within ten (10) days after such change has been made.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 16, effective June 17, 1978.

217B.580 Disposition of fees.

All fees collected by the department from structural pest control operators for licensing and examinations shall be deposited in the State Treasury to the credit of a revolving fund for the use of the department in enforcing the provisions of KRS 217B.515 to 217B.585 and for the expense of carrying out the duties and functions of the Pest Control Advisory Board.

Effective: June 17, 1978

History: Created 1978 Ky. Acts ch. 81, sec. 17, effective June 17, 1978.

217B.585 Actions for enforcement.

It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General to bring an action for the recovery of the penalties provided for in KRS 217B.990(5), and to bring an action for an injunction against any person violating or threatening to violate any provision of KRS 217B.515 to 217B.575 or violating or threatening to violate any order or determination of the department promulgated pursuant thereto. In any such action any finding of the department shall be prima facie evidence of the fact or facts found therein.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 250, sec. 8, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 295, sec. 68, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 81, sec. 19, effective June 17, 1978.

Penalties

217B.990 Penalties.

(1) Any person who violates any of the provisions of this chapter or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty of not to exceed the sum of one thousand dollars (\$1,000) for said violation, and an additional civil penalty of not to exceed one thousand dollars (\$1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided in this section. Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request by the Attorney General.

(2) Any person who fails to abate a violation within the time period prescribed by administrative regulation for the abatement shall be assessed a civil penalty of not less than one hundred dollars (\$100). Each day of continuing violation may be deemed a separate violation for the purpose of penalty assessment. The Commissioner shall develop a method for calculating monetary penalties and shall promulgate a schedule of the penalties in an administrative regulation. The penalty shall be recoverable in an action brought in the name of the Commonwealth. All sums of recovery shall be placed in the State Treasury. A license holder shall have thirty (30) days from notification of the penalty assessment to request a hearing.

(3) It shall be the duty of the department, or upon the request of the Commissioner of Agriculture, of the Attorney General to bring an action for the recovery of the penalties herein above provided for, and to bring an action for an injunction against any person violating or threatening to violate any provision of this chapter or violating or threatening to violate any order or determination of the department promulgated pursuant thereto. In any such action any finding of the department shall be prima facie evidence of the fact or facts found therein.

(4) Any person who shall willfully violate any of the provisions of this chapter or any determination or order of the department promulgated pursuant to those sections which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment for a term of not more than one (1) year, or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

(5) Any person who violates any of the provisions of KRS 217B.515 to 217B.585 or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty of not to exceed the sum of one thousand dollars (\$1,000) for said violation, and an additional civil penalty of not to exceed one thousand dollars (\$1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided for in KRS 217B.585. Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department, or upon the department's request by the Attorney General.

(6) Any person who shall willfully violate any of the provisions of KRS 217B.515 to 217B.585 or any determination or order of the department promulgated pursuant to those sections which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment for a term of not more than one (1) year or by both

fine and imprisonment for each separate violation. Each day upon which the violation occurs shall constitute a separate violation.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 250, sec. 7, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 295, sec. 69, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 81, sec. 19. -- Amended 1976 Ky. Acts ch. 289, sec. 6. -- Amended 1974 Ky. Acts ch. 148, sec. 28. -- Created 1972 Ky. Acts ch. 130, sec. 26.